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The Alaska BAR RAG

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American Judges Association Meets in Anchorage

The American Judges Association, the world's largest independent organization of Judges, held its annual convention this year at the Anchorage Westward Hilton Hotel in Anchorage from September 26th through October 3, 1980.

The 1,500 plus member organization was founded 21 years ago, first as the Municipal Judges Association, then as the North American Municipal Judges Association, finally as the American Judges Association. Representing every level of the judiciary, the membership meets annually in different locations to discuss topics of interest to all judges. The Association and its meetings are self supporting and do not rely upon any court system for money.

Our Genial Host

Anchorage District Court Judge **Joseph J. Brewer**, a five-year member of the Board of Governors of the American Judges Association served as chairman of this year's meeting. In this capacity, he organized the program and hosted more than 200 Judges from 26 states, Washington, D.C., and Canada. The membership attending the meeting passed a special resolution of recognition and appreciation for Judge Brewer's dedicated service.

Very Important People

Among the Alaska Judiciary participating in the program were 9th Circuit Court of Appeals Judge **Robert Boochever**, Supreme Court Justice, **Jay Rabinowitz** and Justice **Edmond Burke**, Anchorage Superior Court Presiding Judge **Ralph Moody**, District Court Judge **James Honaday** of Homer, Alaska and Magistrates **Barbara McFarlane** of Healy, Alaska, **George Peck** from Seward, Alaska and **Sheldon Sprecker** from Glennallen, Alaska. Other luminaries included **Arthur H. Snowden II**, Administrative Director of the Alaska Court System, the Honorable **Terry Miller**, Lieutenant Governor, Anchorage attorney **Edgar Paul Boyko**, Dr. **McCarthy DeMere**, a forensic medical expert from Memphis, Tennessee, Assistant attorneys general **Dan Hickey** and **Barry Stern**, **Bill Tobin**, Editor of the Anchorage Times and Dr. **Glenn A. Olds**, president of Alaska Pacific University.

Among the highlights of the program were the annual **Tom C. Clark** lecture given by Justice Burke on the subject of cameras in the courtroom, Justice Boochever's banquet address on the exclusionary rule and Judge Moody's trip down memory lane describing frontier justice in territorial days.

SUPREME, ANCHORAGE, NOME JUDICIAL EVALUATION POLL

Compton, Moore, Tunley Lead

The Alaska Judicial Council, in cooperation with the Alaska Bar Association sponsored a survey of all members of the Alaska Bar to ascertain member's evaluation of 23 judicial candidates who have applied for vacancies on the Alaska Supreme Court, Anchorage Superior Court and Nome Superior Court. The questions for the survey were based on three similar evaluations completed since March with the questionnaire formatted into a six-page, two-sided form. The forms were mailed to 1,348 members of the Bar with a request to return the questionnaire no later than September 25th. Names with addresses outside the United States were not sent a questionnaire. To include as many returns as possible, questionnaires received through October 2 were added to the analysis. Of the 1,348 sent out, 794 were returned for a rate of 58.9 percent. This is the highest return rate of the four evaluations conducted.

There is wide variation in the response pattern. **Victor Carlson** had more members willing to evaluate him than any other candidate (88.0 percent). **William Donohue** had the smallest proportion evaluating him (29.3 percent).

Supreme Court Candidates

James Singleton is rated high on all attributes and scores particularly well in willingness to work, integrity, good character, and legal reasoning and knowledge of the law. He is comparatively downrated somewhat in deciseness, and basic fairness. In all he ranks first in five of 11 items. **Allen Compton** ranks highest on four items: understanding and compassion, judgment, reasonableness and freedom from arrogance. He ranks fourth on legal reasoning-knowledge of the law and willingness to work. **Victor D. Carlson** ranks first in decisiveness, and second in integrity and willingness to work. His comparative scores are lower for freedom from arrogance, basic fairness and reasonableness.

Andrew Kleinfeld has ranks ranging from second (legal reasoning and knowledge of the law) to fifth (freedom from arrogance and understanding and compassion. **William Ruddy** also falls into a more mid-range of ranks with best comparative scores in freedom from arrogance, understanding and compassion, and reasonableness.

John Havelock, **Donna Willard**, and **Art Peterson** were generally ranked lower compared to the other candidates. Havelock ranked best in legal reasoning and knowledge of the law (fifth); Peterson for willingness to work (fifth); and Willard in decisiveness and willingness to work (sixth).

Analysis of Selected Scores

A broader perspective of how the Supreme Court candidates fared with the respondents is to compare them on a Likert-type additive scale and on the general question, How Good a Judge Would the Person Make?

With very similar scores Compton and Singleton rank first and second respectively. Carlson ranks third followed by Kleinfeld and Ruddy. Well below these scores are Havelock (sixth rank), and Peterson and Willard (who exchange seventh and eighth ranks depending on the measure).

Summary

In summary, it must be noted that the analysis had to be comparative in nature and thus relative to other candidates scores. Even poorly ranked candidates received scores averaging in the acceptable category. Also caution must be used in overinterpreting differences of one or two ranks. A second or third

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Visitors Pan Judicial System

by Maureen Blewett

Judges from around the nation litterally leaped to their feet to tell Alaska's urbane and scholarly Chief Justice **Jay Rabinowitz** he is naive if he really believes politics have no role in the selection of Alaska's judges.

The attack Wednesday was a surprise to the low-key Rabinowitz, who had come to the meeting simply to tell members of the American Judges Association that Alaska's merit system has taken judges out of politics.

Elected judges who have to hustle votes—one said he spent $25,000 on the last election—don't like to hear that.

They jumped up by twos and threes to disagree, and as Rabinowitz stepped down from the podium, they grabbed him by the arm to make sure he knew how they felt.

Rabinowitz stuck to his guns with aplomb and a dry wit and got a standing ovation for his pains.

He had earned it.

"It's amazing he can say those things with a straight face," said a visiting judge to a friend as he poured a cup of coffee after the speech.

"How naive does he think we are?" asked a woman judge in the back of the room.

You can take a judge out of politics, they seemed to say, but you can't take the politics out of a judge.

Alaska's judges are not chosen for their political clout, their good looks or how much campaign money they can raise, Rabinowitz told judges at the association's 20th annual meeting at the Anchorage Westward-Hilton.

They apply, are interviewed by a six-member Judicial Council and chosen by the governor after personal interviews and a poll of lawyers and peace officers.

The same Judicial Council publishes a voters' pamphlet giving its opinion on whether a judge should be retained in office. No Alaskan trial judge has ever been defeated at the polls.

Said Rabinowitz, "Voters shouldn't be voting on charisma or on the amount of money a judge has to spend. I would get belted out by a guy with clout. Or by a good-looking woman," the justice said, poking fun at his own remote demeanor.

It sounded like a motherhood, God and apple pie issue.

His audience was unconvinced.

Judge **Harvey Baxter** of Miami, Fla., jumped to his feet. He had scribbled his objections to Rabinowitz on a napkin and reeled them off to the chief.

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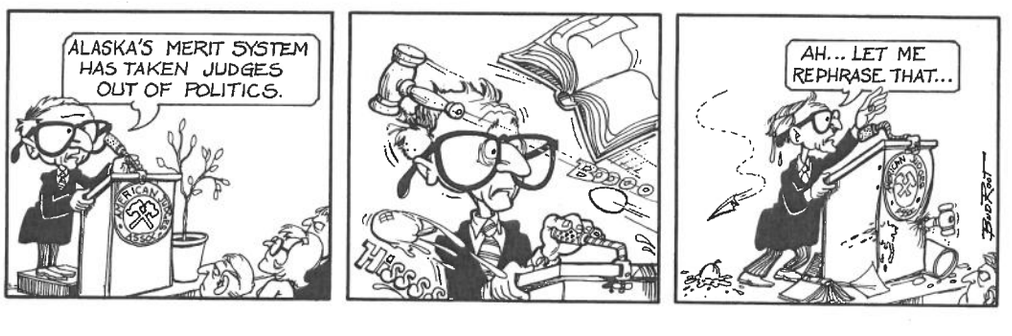
INSIDE

Minority Report



Bar Poll

[continued from page 1]

ranking may be *relatively* the same in terms of raw scores. Of greater interest are differences as candidates are compared or vary among the top, middle, and lowest candidates. To give a general idea of the groupings that are occurring, a composite analysis was made of each candidate's total score and the amount of group differences occurring. This analysis produced four definable groups which can be ranked highest and lowest.

Analytic Grouping of Candidates

Compton
Singleton

Carlson

Kleinfeld
Ruddy

Havelock
Peterson
Willard

Evaluation of Anchorage Superior Court Candidates

Daniel Moore ranks first on all 11 scales. This is an unusual feat, especially in that there is a significant gap between himself and all other candidates. **Brian Shortell** follows with six second ranks. Comparatively Shortell is highly rated for good character, and understanding and compassion. He does less well in willingness to work. **Glen Anderson**'s ranks range from second to fifth with positive scores for integrity and less well in freedom from arrogance.

Doug Serdahely produces a much greater range of comparative scores. Ranked second in legal reasoning and knowledge of the law, willingness to work, and professional competence, this contrasts with an eighth ranking in freedom from arrogance, sixth in integrity, and sixth in good character. **James Wanamaker** follows a more consistent pattern with comparative scores ranking in the top half of candidates. His better ranks were in basic fairness and freedom from arrogance.

Eugene Murphy's scores tend to rank at about the midpoint though he ranks second in freedom from arrogance. **Arthur Robinson** tends to fall in the third quarter though he has a third rank in understanding and compassion. Poorest scores were for willingness to work and legal reasoning and knowledge. **William Donohue**'s scores consistently rank from seventh to tenth, while **Sheila Gallagher** ranges from eighth to eleventh rank and **William Mackey**, ninth to thirteenth.

Steven Branchflower shows greater variation with fifth rank for decisiveness and sixth for willingness to work. This contrasts with basic fairness, and understanding and compassion which rank last. **Cheri Jacobus** falls in the lowest quarter, except an eighth rank for willingness to work. **Carolyn Jones** ranks twelfth or thirteenth in nine of eleven items.

Analysis of Selected Scale Scores of Anchorage Superior Court Candidates

A broader perspective of how the candidates fared with the respondents is to compare them on a Likert-type additive scale and on the general question, How Good a Judge Would the Person Make?

The two measures produce almost the same results. Moore ranks first with Shortell, Anderson, Serdahely and Wanamaker grouped significantly below him. Murphy ranked sixth is followed by Robinson, Donohue and Gallagher. Branchflower and Mackey share tenth and eleventh ranks depending on the measure used. The final two ranks are held by Jacobus and Jones. Moore's strength can be seen by noting that 67.4 percent rated him excellent. The next candidate received 37.7 percent.

Analytic Grouping of Anchorage Superior Court Candidates

Moore

Shortell
Anderson
Serahely
Wanamaker

Murphy
Robinson

Donohue
Gallagher

Branchflower

Jacobus
C. Jones

Evaluation of Nome Superior Court Candidates

Charles Tunley is rated consistently higher than **Paul Jones** on all attributes and scores particularly well in freedom from arrogance, integrity, and understanding and compassion. He is downrated somewhat in legal reasoning and knowledge, professional competence and judgment. Jones is rated highest in integrity and good character and poorest in the same three items as Tunley. Interestingly, these ratings are not particularly strong in a comparative perspective. Placing these ratings with the Anchorage Superior Court candidates, both would fall in the lowest quarter.

Analysis of Selected Scale Scores

A broader perspective of how the candidates fared with the respondents is to compare them on a Likert-type additive scale and on the general question, How Good a Judge Would the Person Make?

The two measures produce the same results. Tunley scores highest in both, though the quantitative gap between the two is not significant.

Memorial Services

Memorial services for the late **Robert Lee Hartig** will be held at 4 p.m. on Tuesday, Oct. 28, 1980 in the Supreme Court Room of the Anchorage court house.

Board of Governors Meet

The fall meeting of the Board of Governors of the Alaska Bar Association was held in Fairbanks on September 6-8. Being that close to the Tanana Valley Bar Association created a certain air of craziness about the meeting, which was complicated by court security personnel who kept locking doors as fast as **Randall Burns** unlocked them, thus leaving several Board members stranded outside the building during the opening session.

In one of its more surprising moves, the Board agreed to withdraw proposed Bar Rule 61 from submission to the Supreme Court, and to withdraw the proposed amendment to Bar Rule 81. Both provisions have to do with requiring an active member to either reside in the state or to maintain an office in the state form which he conducts the practice of law. The effect of the withdrawals is to leave the category of active membership open to those who reside outside the state and who do not have a local office.

Boring Housekeeping

The Board did a number of housekeeping tasks which should help cut down its meeting times, but which would not be too interesting to someone not on the Board. Thanks to Randall, the Board reviewed a complete package of all pending Bar Rule changes, and moved forward on tir consideration. Randall had also gone through the "blue book," which is essentially a manual of Board rules, regulations and policies, and is putting it all into standard form, so that the members can consult a reasonable source on all phases of the Board's operation.

The Board decided to go forward with integration on two fronts. The court will be requested to adopt a proposed bar rule to integrate the Bar Association, and the Board will again hire a lobbyist and proceed to aid the Legislature in its dealings with the Bar Association. A meeting will be held on October 25 at 1:30 p.m. in Room 402 of the Boney Memorial Courthouse to solicit public input on what the Bar's responses to legislative proposals should be.

Litigation

On the litigation front: since the meeting the Supreme Court has requested further briefing from both sides on the question of legislative audits of the confidential records of the Bar Association. The FTC Questionnaire, which seems to deal mostly with legal aid clinics and specialization, two animals not seen in Alaska, has been under review by the General Accounting Office. When it comes out, the Board intends to answer most of the questions with a narrative, since much of the form is not applicable. Also, the Alaska Supreme Court is presently considering the question of an award of costs and attorney's fees against the Bar Association in a successful admissions appeal.

The Board considered potential advertising against judges found not qualified by the judicial council, and for those found qualified. The question was postponed until the tax consequences of such a move could be considered.

As a fitting note to approaching winter, **John Link**'s Can-can Cuties danced their last dance in the Saloon for the year. The Board was invited to attend the closing. Many made it, but **Jerry** and **Sylvia Wade** and **Pat Kennedy** did not. Due to unclear directions from the Fairbanks contingent, they were on their way up the pipeline haul road to Livengood, on the unpaved section, looking for a restaurant, when the last show began.

NOBC Report

The National Organization of Bar Counsel (NOBC) with over 200 lawyer members from 37 different states, other jurisdictions or agencies today announced the distribution of its Report on the American Bar Association Commission on Evaluation of Professional Standards' (the "Kutak Commission's") draft proposals for a new model ethics code which, if adopted, would set standards of conduct for the legal profession.

The NOBC whose members primarily serve in lawyer disciplinary agencies urges the Commission not to abandon the present ABA Model Code of Professional Responsibility in effect since late 1969 but instead to revise the present model code and update its provisions. In many instances the Commission's proposals essentially repeat the present code provisions or gives them a new twist while others represent significant changes from the past.

The NOBC Report considers each section of the Kutak Commission's proposal in detail and either points out where the item is already adequately covered in the present model code, recommends adoption of a Commission proposal showing how and where to fit it into the present ABA Model Code or recommends rejection of those sections not considered desirable or necessary.

Since most of the NOBC lawyers are engaged on a daily basis in enforcing the disciplinary rules of the codes of ethics in effect in their jurisdictions, they have a special concern that whatever ABA model code or rules proposals are adopted that they be clear statements of enforceable standards. While individual jurisdictions are not bound by any ABA model code or rules which may be adopted by the Association, nevertheless such ABA guidance is quite persuasive throughout the country. The present ABA Model Code of Professional Responsibility, for example, has been adopted with variations in over 47 states and the District of Columbia.

Tanana Valley Bar Association Fairbanks, Alaska

RESOLUTION

Whereas, the number of bankruptcy proceedings filed in Fairbanks, Alaska, is 50 as of August 14, 1980, and only 60 cases were filed in all of 1979, even though since October 1, 1979, a husband and wife may file a joint petition, and

Whereas, the only trustee on the panel of trustees resident in Fairbanks has resigned, and

Whereas, in nearly all cases, it is not practicable to have Fairbanks bankruptcy estate administered by a trustee resident in Anchorage, Alaska, because of time, expense and other problems of transportation and communication, which would be comparable to a Washington, D.C., trustee administering small bankruptcy cases in Columbus, Ohio (except that long distance telephone charges between these cities are much lower than between Anchorage and Fairbanks), and

Whereas, there is, therefore, an urgent need for a qualified trustee on the panel of trustees for the District of Alaska, who is resident in Fairbanks, and

Whereas, **Jeanette James** is willing to be appointed to the panel of trustees and appears to be qualified and knowledgeable of bankruptcy procedures.

Now, therefore, be it resolved by the Tanana Valley Bar Association that the Bankruptcy Division of the Administrative Office of U.S. Courts promptly consider the application of Jeanette James for appointment to the panel of trustees for the District of Alaska and that, if she be found qualified, she be appointed as soon as possible.

Be it further resolved that a copy of this resolution be sent to the Bankruptcy Division of the Administrative Office of the U.S. Courts; The Honorable **J. Douglas Williams II**, U.S. Bankruptcy Judge; Senator **Ted Stevens**; Senator **Mike Gravel**; Representative **Don Young**; and the Alaska Bar Association.

ADAPTED: August 15, 1980.

The Bar Rag Thanks its Advertisers For Their Continued Support

Random Potshots

by John Havelock

"There are two Dee twos"

An extraordinary number of column inches of newsprint have been devoted to the proposed Alaska National Interest Land Conservation Act (Amendment No. 1961 [As Modified] HR 39 in the Senate). All the public attention has focused on two-thirds of the bill. A solid third of this 446-page monster consists of amendments sought by persons having an interest originally arising under the Alaska Native Claims Settlement Act.

The scope of these amendments and the complete absence of public clamor are eloquent, mute testimony to the superior expertise of the Alaska Native interest with Congressional management, honed by a decade of experience. If the rambunctious coalition of interests opposing the national interest land portions of the bill were half as effective, the bill would already have been passed including a transfer of all the public lands of Nevada and California to the State of Alaska.

Juicy Deals?

By volume, the largest portion of the Amendments to the Alaska Native Claims Settlement Act and Related Provisions (which are not all in Title XIV which bears this caption) involves specific land deals of benefit to ANCSA corporations. Perhaps the juiciest of these lies in Section 1431 which will give the Arctic Slope, acre for acre, subsurface exchange rights in national interest lands if within 40 years, the government sanctions commercial development of oil and gas within 75 miles of a village corporation's selection.

A very quick review does not reveal that any of these many land deal provisions directly affect the interest of third parties, though it may be that a person with an inholding in the federal domain will now find himself with an inholding on ANCSA land.

Preserving Nativity

The provisions which adjust the structure of the Settlement Act itself are likely, in the long run, to prove of more general interest to lawyers.

For better or worse, the original scheme of the Settlement Act allowed for a gradual merger over generations of the ANCSA corporation establishment into the general scheme of Alaska corporate, economic life via inheritance and stock alienation after an initial 20-year period of restrictions on alienation. Section 1401 of Amendment 1961 will allow ANCSA corporations to cancel voting rights in stock held by any person who is not a Native or a descendant of a Native (such as a spouse).

Section 14(c) of the Settlement Act provides for redistribution by village corporations of selected land to (1) occupants (Native or non-Native), (2) nonprofit occupants, (3) existent or inchoate municipal corporations (not less than 1,280 acres per village, and (4) governmental occupants for airport purposes.

Summary Justice for Occupants?

Section 902(b) of Amendment 1961 provides that a one year statute of limitations will start to run against all interested parties upon the filing of a 14(c) boundary map by the Village Corporation with the Secretary. While this provision remains to be implemented by regulations which could assuage some of its harsher effects, there is a major potential here for the wipeout of unprotected interests on a large scale, including the interests of Alaska Native occupants. The principal argument for such legislation is that it will provide earlier certainty of title.

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Editorial

It's Political

Notwithstanding Chief Justice Rabinowitz's recent remarks to an outraged audience at the American Judges' Association Conference in Anchorage, it is obvious that the process by which judges are selected in Alaska is political from start to finish and will continue to be so as long as the Governor picks the judges.

The Bar Poll

Alaska lawyers play a part in this process. To begin with, we "vote" for our preferred candidates in the Bar poll regardless of the sophistication of the questions asked or their tabulation. Some of us stack the cards for our favorites giving them unrealistically favorable responses while unfairly panning other candidates. What weight the results of the Bar poll have on the Judicial Council and the Governor might depend upon a number of factors, including their publication before the Council makes its selection, the number of obviously slanted responses, and whether the Governor and/or the Council agree or disagree with the results.

The Judicial Council

Lawyers as well as laymen are invited by the Judicial Council to write letters evaluating candidates who listed them as references. Aside from these letters and the Bar poll, members of the Council may have recourse to attorneys as well as private citizens, including the Governor or his political associates, who have something to say about the candidates and who may wish to influence the decision of the Council. After the Bar poll is published, the Council conducts thirty-minute interviews with each of the applicants and then meets in executive session to vote for their slate of candidates to be submitted to the Governor. Although the Chief Justice, as ex-officio head of the Council, by his own decision does not vote except in the case of a tie, his influence upon the council must be considerable in light of the fact that he takes an active part in the discussion of the qualifications of each of the candidates.

Lobbying

After the Judicial Council has made its selection, survivors and their friends solicit members of the Bar and public to speak or write to the Governor as well as other persons who may be able to influence his choice. Certain political figures in Juneau including the ex-Attorney General are reputed to have the ear of the Governor in this regard. Candidates who know the Governor, one of his campaign managers, the Attorney General, any one of a half-dozen long term office holders in the House or Senate, or someone who can "reach" these people, have an edge in the sweepstakes. Of course, it doesn't hurt to have the City Police, the State Troopers, a church congregation, a fraternal order or some political activist group behind the candidate, either.

An Argument

The argument can be made that we have a better political process for selecting judges in Alaska. At least, this position is defensible. With the appointment system, although we ultimately have to depend upon a politician, three of his political appointees, three lawyers and the Chief Justice to make our selections for us; at least we don't have to endure the evils of a full-fledged election campaign with its attendant publicity, purchased party endorsements, vote buying, ticket balancing, public appeals to ethnic and special interest groups, rewards system for long and faithful party service and occasional election of charismatic hacks.

We can point to the record thus far and argue that there have been some pretty good selections. It may be said that merit had something to do with them. At least it could be argued that the seven wise men on the Judicial Council act as a fail-safe device to keep the mentally unbalanced, morally unfit, obviously inexperienced or incompetent off the bench. At best, we can say that under our system, the Governor may have a better field of applicants to choose from than the public would have in an election. Unfortunately, the Judicial Council has been known to eliminate obviously qualified candidates including several who have applied again and ultimately been appointed to the bench.

It is not a particularly good system, but it might be worse. No matter how much we change it, the system will always be political in nature. True merit selection of judges is certainly a good idea if anyone can figure out a way to make it work. We haven't so far. We don't have any reason to pretend otherwise.

—Harry Branson

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President's Column

At its September meeting the Board of Governors considered several topics that should be of interest to all members. Included among these were the results of a bar survey on integration by court rule.

As you will recall, the survey form that was circulated called for narrative answers rather than multiple choice responses that lend themselves to statistical compilation. That was desirable from our point of view because we were soliciting ideas, not conducting a referendum. The survey generated much broader comments than has ever been received before on a proposed rule. Nevertheless, only about ten percent of the membership responded. A review of their answers shows strongly shared feelings on some topics and a close division on others.

Survey Supports Continued Integration

Over 80% of the respondents supported continuation of the integrated bar. A solid majority favored continued integration by statute. About 60% favored integration by court rule, but that included a group of over 10% who favor court integration only if it seems that the legislature is going to make significant changes in the integrated bar act.

A large majority favored the acceptance of state money to run the bar, but most wanted the money appropriated without string attached. Our experience last year indicates that, almost by definition, legislative funding comes with strings attached.

Court Order Issued on Legislative Audit of Records

By over two-thirds, the members responding opposed turning over confidential records to legislative audit in connection with Sunset review by the legislature. Another 15% favored releasing records, but only if steps were taken to remove names or otherwise protect the confidential nature of the information. The Alaska Supreme Court has recently issued an order in the litigation pending on this subject seeking more information about the records and the practices of both the bar and legislative audit. We are working on a response with the Office of the Attorney General and hope to achieve a reasonable resolution either by agreement or a court order at a minimum of cost and with a minimum of acrimony.

A much closer question involved the addition of lay members to the Board of Governors. A very small majority favored the addition of lay members, and some of the supporters conditioned their endorsement saying they would support lay members only if it was politically necessary or if the lay members couldn't hold office or vote.

Board Withdraws Proposed Rule Limiting Practice By Members Who Neither Reside Nor Have An Office In The State

In other action, the Board withdrew its proposed amendments to Bar Rule 61 concerning practice by members not residing or having an office in the state. This decision undoubtedly will be controversial if the past level of disagreement and debate on the issue is any indication. The Board continues to believe that practice by attorneys with no local base in Alaska presents a problem. However, the bylaw and proposed rule requiring that a member living outside Alaska either have an office in Alaska, sign an affidavit that he would not practice in Alaska, or go inactive (requiring Rule 81 admission to practice in the state), seemed to generate more problems than it solved.

Other decisions at the last Board meeting are discussed elsewhere in the Bar Rag. One of particular importance is the appointment of a committee to consider possible changes in the Code of Professional Responsibility. As most of

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ALL MY TRIALS

by Gail Roy Fraties

My readers have prevailed upon me to comment on client relations. I am delighted to do so, despite the fact that the only rule that consistently works with my own is to stay away from them when the moon is full.

In this context, I have examined with interest the ATLA's proposed Code of Conduct (presented by that organization as the "Alternative to the ABA Disaster"), Part II, Fidelity to the Client's Interests, §2-1, which provides: "In a matter entrusted to a lawyer by a client, the lawyer shall give undivided fidelity to the client's interests *as perceived by the client*, unaffected by any interest of the lawyer or of any other person, or by the lawyer's perception of the public interest" (emphasis mine). I mean, why look further—here it was all the time, right in front of us.

With the above as preamble, I am reminded of the first client conference I ever attended (as an observer). California trial lawyer, **William F. Bryan,** in his urbane and gracious way, had asked his prospective client for a brief statement. This request, as was Bryan's custom, was prefaced by an admonition that it was in the client's best interest to tell the lawyer the whole truth, however embarrassing, and that he was protected by the attorney-client privilege in doing so.

A Terrible Misunderstanding

Our caller was a large and imposing man, obviously accustomed to deference and respect. He identified himself as a minister of the Gospel, and stated: "Mr. Bryan, I have been the victim of an incredible accident. I was walking alone in the city park, late in the afternoon, when I felt a 'call of nature.' There were no public bathrooms in sight, and I—thinking myself alone—stepped off the trail, and behind a tree, to relieve myself. You can imagine my chagrin and dismay to discover that I had been observed by a troop of Brownie scouts, and that their leader had been so misguided as to report the incident to the police. Obviously, I had no knowledge of the presence of these children—and now, the mere fact of my arrest has blighted my career. I'm sure that this terrible misunderstanding can be cleared up, so that I may be allowed to return to my congregation and my life work of spreading the good news of the Lord, free of the awful suspicion that has been created about me. I'm not accustomed to dealing with criminal lawyers, but given my excellent reputation and standing in the community, this case should present very little difficulty for you. Inasmuch as it is important to me, will you please make a couple of phone calls and straighten it out?"

Bread Up Front

Attorney Bryan, who had been listening with a deeply attentive and sympathetic expression, replied with equal candor. "Padre," he stated with a disarming smile, "for weenie-wavers it's $2,500 up front, American. That's a minimum retainer. If you've got the bread, give my bookkeeper a check on the way out—and tell my secretary the date and time of your arraignment." There was little further conversation, and the shattered cleric, after complying with his attorney's instructions, was soon released to the bosom of his flock. I'm not sure how Bryan stands on the ATLA or ABA guidelines—but I do know that he gets results.

Animal House 1980

It's this sort of anomaly, I suppose, that leads lawyers—particularly trial lawyers—into a variety of self-destructive and outrageous activities. The Ketchikan Bar Association's yearly "Continuing Education of the Bar" at Yes Bay is a case in point. Students of the Ketchikan scene will recall that this function used to take place at Bell Island, but for reasons not made clear to the writer (who attended this year) it has been moved to a new location.

As a mere observer, I do not pretend to the insights of those who have made a thoughtful and informed evaluation of this annual rite, and the reader is directed to "The Migration of the Lemmings, the Running of the Bulls at Pamplona, and the Ketchikan Continuing Education of the Bar—Inquiries into Animal Behavior, as Influenced by Mass Hysteria," *The American Sociologist*, Winter Ed. 1979. As a friend of the participants, I can say that while it is true that the Ketchikan Bar Association is the only private organization in Alaska that is required to make an environmental impact statement before giving a party, I did not observe anything that I considered to be unusual—given the personalities involved. This year's program, as ever, included a searching inquiry into the nature of the First Amendment privilege as well as some experimental investigation into numbers and games theory, involving the use of various props.

Program Notes

Special thanks were voted to Ketchikan attorney, **Hal Brown,** for his imaginative defense before the panel of the redeeming social value of an underground classic, "Big Molly and Proud Mary," as well as to co-panelists, **Cliff Smith** and **Ted King,** for their demonstration to other interested members of the group that gambling is a pernicious evil. As Fairbanks attorney, **Dick Savell,** observed, "Next year I'll just mail those two bastards a check, and I won't have to come here at all." Other group pursuits included an ongoing inquiry into the evils of drink, culminating with a delegation attempting to enter the room of attorney **Mary Guss** (the sole female participant) with an announcement that she had "won the raffle" which—possibly due to the lateness of the hour—fell on deaf ears.

The Glaser Safety Slug

With due deference to our gun editor, Anchorage attorney **Wayne Anthony Ross,** trial attorney **Joe Palmier** of Anchorage has brought to the paper's attention the fact that the heavy subscription by Alaska attorneys to such magazines as "The American Handgunner" and "Big Bore Beauties" (which, coincidentally, was also a sub-title of the classic defended by Mr. Brown, above) is possibly due—in large part—to the therapeutic effect of such articles as "The Glaser Safety Slug—Police Only Manstopper" as quoted in a recent edition of one of these popular magazines. According to the author, "An armed criminal advancing on an officer was shot center with the Glaser Safety Slug. He collapsed, didn't even kick, and was DOA. The coroner—after he had recovered from a brief indisposition induced by the appearance of the body—gave as his opinion the fact that the wound had been induced by an air to ground Sidewinder missile, fired at close range." The author of the article, after stating that "the effectiveness of this new ammunition is largely unknown to the public, the many times hostile press, and those individuals and organizations that are anti-police and dedicated to disarming them" goes on to say that, "This baby, with its muzzle velocity of 7,200 f.p.s., weight of slightly more than half a pound, and fragmentation equal to that of a German field issue 'Potato Masher' hand grenade, is guaranteed to stop a sex-maddened stegosaur in its tracks. No policeman should be without these loads—which so far have not been denounced by either the Geneva Convention or the U.N. Security Council, and are highly endorsed by SMERSH, the NRA, and the National Chiefs of Police Association."

Mr. Palmier reports that after motion hearings before Presiding Judge **Ralph Moody,** he usually returns to the office and reads this article with deep satisfaction—followed (if necessary) by selected portions of *Jaws, Andersonville,* and *The Executioner,* Number 43, *Assassination in Anchorage.*

More Fiction

In closing, I am indebted to the following correspondents for their reporting of legal fictions propounded by the Alaska trial judiciary (prompted by our reporting of *Swivel v. Fulano de Tal et al,* in the last column).

1. Dean of the Alaska Trial Bar, **Wendell Kay** of Anchorage, (instruction) "You are to consider the defendant's multiple convictions (for buggery on minors) only as they reflect on his credibility."

2. Juneau defense attorney **Peter Page,** (hearsay ruling) "I will allow a letter from the victim's deceased grandmother for the limited purpose of identifying the defendant, weapon, motive, and an eyewitness account of the shooting—but will caution the jury that they are to accept the evidence only for what they think it is worth."

3. Leavenworth inmate **Jack Jeffrey McCracken,** (commenting on McCracken v. State, Alaska Supreme Court, 1974), "If the error was so God damn harmless, why am I doing 45 years?"

President's Column

[continued from page 4]

you are aware, the American Bar Association is considering the so-called Kutak draft which would substantially change the present code. Other bar associations have done extensive work on this question as have organizations such as the National Organization of Bar Counsel. The America Trial Lawyers Association has proposed a radically different code from the Kutak draft. Whatever the American Bar does, its action will have no substantive effect in Alaska until our state bar recommends action to the Alaska Supreme Court on the Code of Professional Responsibility. The questions involved are complex and the Board believes it is necessary to involve ourselves in the review process now in an effort to attempt to influence the American Bar Association decision, and in order to prepare ourselves in advance for the debate that will take place on proposed changes for Alaska.

Open Meeting In Anchorage October 25 To Discuss Legislative Program

One final word on Sunset and continuation of the integrated bar. Regardless of what action is taken on integration by court rule, the legislature will convene in January. It is virtually certain that legislation addressing the organization and control of the bar will be intoduced. Whether we are dealing with the legislature out of necessity or as a matter of comity, an active legislative program will be essential. Last year's legislative process was not all together unproductive. One result of that review was a closer analysis by the bar of its own performance. Some of the things we saw have convinced us that changes should be made, and we are attempting to implement those changes.

In preparing our approach to the legislature for 1981, we are asking for the input and assistance of our members. It was quite apparent to us last year that members of the bar who are not on the Board of Governors and local bar associations have a strong influence on the legislature where questions concerning the Alaska Bar Association are concerned. We did not make adequate use of that resource last year and would like to change that for the forthcoming session. As part of that effort, an open meeting on our legislative program is scheduled for Saturday, October 25th, at 1:00 p.m. in Room 402 of the courthouse in Anchorage. At that meeting we will be asking for your suggestions on a legislative program and for your assistance in implementing that program. We hope to see you there.

—Bart Rozell

We Goofed

Dear Harry,

Would you please print a correction in the *Alaska Bar Rag* of an error that was made in the "Judicial Sweepstakes" listing on me. The listing says that my only appellate experience was arguing one court appointed appeal. Actually, I have briefed between a half dozen and a dozen Alaska Supreme Court cases, and made oral argument in at least three that I recall.

Under "Other Qualifications," the scratch sheet says that I teach constitutional law. Actually, I taught it a few years ago, but do not teach at this time.

Thank you.

Sincerely yours,
Andrew J. Kleinfeld

(Editor's Response: *We're sorry—we goofed. Our researcher misunderstood her questions and your answers.)*

Judge Miller

The Anchorage Association of Women Lawyers announced to recently-retired Judge **Mary Alice Miller** at their September 3 meeting that a donation of books was being made in her honor to the Fairbanks law library.

The volumes donated include the *Women's Rights Law Reporter, Sex Discrimination and the Law, Women in Court, Women in Crime and Criminology, Women in the Criminal Justice System,* and *Cases and Materials on Sex-Based Discrimination.*

Judge Miller, who recently retired after nearly 13 years on the District Court bench in Fairbanks, addressed the AAWL at the meeting. She spoke of her early experiences in legal practice, listed practical steps toward a bet ter courtroom presentation, and explained how changes in the court system led to her decision to retire.

Potshots

[continued from page 4]

Municipal Interests to Suffer

Section 1405 of the bill provides that the municipal entitlement of 14(c)(3) may be fully and finally met by agreement on any acreage, opening the door for nullification of most of the impact of this section via agreements that do not necessarily represent longer term municipal interests.

Sweeping the Seas of Navigability Issues

In another effort to close off an extensive litigation potential which may also affect inchoate future interests, navigability determinations (which decide what sub-water property the state owns) are deemed final under various circumstances under Section 901.

Allotment Drive Vindicated

A huge body of administrative litigation is disposed of by Section 905 which will grant almost all of the allotments filed in a massive effort by Alaska Legal Services Corporation in the months preceding adoption of the Settlement Act without adjudication of their merit.

Land Bank

All landowners, particularly of recreational land, may be interested in Section 907 which establishes an Alaska Land Bank Program. For maximum utilization by persons not taking under the Settlement Act, this provision will also need to be implemented through state legislation. Much of the charm of land banks is likely to fade as the cloud of potential property taxation evaporates.

While at this writing, the enactability of Amendment No. 1961 is still up in the air, I would bet my bottom dollar that the ANCSA related materials will be the law of the land by the end of the next session of Congress if not this one.

INSIDE/ OUTSIDE

Information & Observations

by Karen L. Hunt

Prudential Enters Pre-Paid Market

Prudential Insurance Company "The Rock" has begun selling prepaid legal service policies as an employee benefit in California as a part of a pilot marketing project. The plan became effective June 1 for two companies and several other policies went into effect July 1. In the first stage, clients may telephone a "preventive legal care office," which is a local law firm that provides initial consultation and advice over a tollfree number. Attorneys involved in this screening process cannot handle any litigation for the insured and if the legal matter is complex, an outside attorney is brought in.

For follow-up case work, a client may choose an attorney who has been indemnified for his services. Prudential offers a state-wide panel of lawyers who may handle a variety of legal matters, from adoptions to zoning hearings with the agreement that the indemnification amount constitutes total reimbursement.

Three States Require Practicum for Admission

New Hampshire has now joined the states of New Jersey and Colorado in requiring a new admittee to devote several days to a practical skills course which is mandatory for admission. The New Hampshire course consists of a two session in October followed by a five (5) day meeting in April. New Hampshire's annual growth rate runs at about ten percent (10%) for lawyers. New Hampshire has approximately sixteen hundred (1600) lawyers and is admitting another one hundred (100) to one-fifty (150) each year.

Tinkering With Trust Funds

The Florida Supreme Court has imposed a six-month suspension plus two years probation upon an attorney who used a trust fund "like an interest-free loan account." The lawyer apparently had done no actual harm to any clients, but immediately confessed after a complaint was lodged and cooperated with bar authorities. The Supreme Court, however, ruled that mere public reprimand would be insufficient when the ethical violation involved misappropriation of trust funds.

"Engagement" and "Nonengagement" Letters

The Minnesota Supreme Court has upheld a $650,000.00 damage award against an attorney holding that the attorney failed to perform the minimal research that an ordinary prudent attorney would do. The case resulted from the attorney meeting with a friend-of-a-friend for approximately forty-five (45) minutes. The "client" described treatment received by her husband in a local hospital. At the end of the interview, the attorney told the "client" that there was nothing in the factual circumstances which suggested to him that she had a case that his firm would be interested in taking. The attorney indicated that he would review the matter with another firm and let her know if it had a different opinion. He also adivsed her to talk promptly to another attorney for another opinion.

Although the attorney checked with the other law firm, he did not call the woman back and did not send her a bill. He also did not advise her as to when the statute of limitations would run on the case nor did he review any medical records.

A short time after the statute of limitations had run, the woman consulted with another attorney. She then sued the first attorney and his law firm. At the subsequent malpractice trial, the jury awarded the "client" $650,000.00. The Supreme Court upheld the verdict and award.

The trial and the appellate decisions underscore that a lawyer cannot reject any case brought to him for consideration by a potential client simply on the basis of the lawyer's judgment as to the merits of the case *unless* the lawyer makes a careful investigation of the facts and the legal issues involved. Secondly, the decision underscores that a "client" may not recognize the difference between a rejection of his case on its merits and a rejection of the case by the attorney for some other reason. If the case is rejected by an attorney other than on its merits, that fact should be made clear. It appears advisable not only to tell the "client" that he or she should consult another attorney, but the "client" should be advised also as to the statute of limitations which applies to the case with an explanation as to what the statute of limitations means.

Finally, the case underscores that every attorney should consider the "engagement" letter which describes exactly what the lawyer has undertaken to do; follow-up actions to be taken by the client; any limitations on the lawyer's undertaking; major factual assumptions' and explanations of fee and cost arrangements.

Likewise, if an interview or other contact leads to a rejection of a matter, a "non-engagement" letter should also be considered. Appropriately, the letter should include advising the recipient to contact another lawyer and should state applicable statutes of limitation. RESTATEMENT OF TORT. SECOND 299 A is a provision that all attorneys should be aware of. Emphasis is placed on the word "undertakes" and on the fact that in the comment under this paragraph of the Restatement, it is made clear that one may have an undertaking without having a contract. It is this "undertaking" which gave rise to the $650,000 verdict in Minnesota.

Notice

Judge **Davis** is presently residing at the Hale Makua Kahulu Nursing Home, Kahulu, Maui, Hawaii. He is able to receive visitors at the home. Correspondence may be addressed to him, c/o Mrs. Davis, 507 Wailuku Townhouse, Wailuku, Hawaii 96793.

Willard Appointed to American Bar Committee

Donna Willard, immediate past President of the Alaska Bar, has been appointed by **William Reece Smith,** President of the American Bar Association, to serve a three-year term on the ABA's standing committee on the unauthorized practice of the law.

Like all ABA standing committees, the UPL committee is a seven-member group. It is charged with keeping the association informed on unauthorized practice of law by laymen and lay agencies.

Further included within its scope is the investigation of participation by attorneys in the unauthorized practice of law.

The committee is to advise the American Bar on methods of preventing the unauthorized practice of law and with attempting to eliminate such practice.

Further, it is to cooperate with and give advise and to help state or local bar associations in this endeavor.

Notice

During its September meeting, the Board of Governors of the Alaska Bar Association voted to withdraw the Association's proposed amendments to Alaska Bar Rule 61. In addition, the Board referred Section 2 of Article III of the Association's bylaws to the Statutes, Bylaws and Rules Committee for revision. The Committee is being asked to rewrite the bylaw to *delete* the current requirement that a non-resident member of the Bar who wishes to remain an active member of the Association must either 1) annually file an affidavit stating that he or she "does not reside or conduct the practice of law" in Alaska or 2) "continuously maintain" an office in Alaska.

The Board is withdrawing the proposed amendments to Rule 61 (which contain language similar to that being deleted from the bylaw[1]) and beginning the process of amending the bylaw because it has found that the requirements in question are both impractical and administratively unenforceable. Further, the constitutionality of the requirements has been questioned in written comments received regarding both the proposed Rule amendments and the current requirements of the bylaw.

The bylaw, as it currently reads, however, will remain in effect, until the usual procedures for proposing an amendment have been followed (including publication of the proposed new language for comment) and alternative language has been formally adopted. the bylaw amendment would define an *active* member of the Association to be any member admitted to the Alaska Bar Association who conducts the practice of law in Alaska. (Please note that certification by the Court to practice law requires an affidavit of domiciliary in Alaska.)

Questions or comments regarding this action may be addressed to the members of the Board or the Executive Director.

[1]It should be noted that Association-proposed amendments to Civil Rule 81 also contain language similar to that being expunged from the bylaw. For the sake of consistency, the Board voted to delete such references from the proposed Rule 81 amendments currently before the Court.

Judicial Sweepstakes Scoreboard

RANKING OF SUPREME COURT JUSTICE CANDIDATES BY INDIVIDUAL-SCALE SCORES

	Legal Reason-Knowledge	Basic Fairness	Freedom From Arrogance	Decisiveness	Willingness to Work	Integrity	Professional Competence	Good Character	Understanding Compassion	Judgment	Reasonableness
Carlson	3	5	6	1	2	2	4	3	4	3	5
Compton	4	1	1	2	4	3	2	2	1	1	1
Willard	7	8	7	6	6	8	7	8	8	8	8
Singleton	1	2	2	4	1	1	1	1	2	2	2
Ruddy	6	3	3	5	7	5	5	5	3	5	3
Peterson	8	7	4	8	5	7	8	7	6	7	7
Kleinfeld	2	4	5	3	3	4	3	4	5	4	4
Havelock	5	6	8	7	8	6	6	6	7	6	6

RANKING OF SUPREME COURT JUSTICE CANDIDATES BY GOOD-JUDGE SCALE

	% Poor	% Deficient	% Acceptable	% Good	% Excellent	% (n)[a]	% X[b]	% Rank
Carlson	6.6	10.0	16.4	30.3	36.7	(621)	3.80	3
Compton	0.9	6.7	14.9	40.4	37.1	(342)	4.06	1
Willard	11.1	23.3	32.8	21.5	11.3	(433)	2.99	7
Singleton	2.8	7.3	16.1	32.4	41.4	(534)	4.02	2
Ruddy	4.1	9.2	31.2	35.8	19.7	(218)	3.58	5
Peterson	9.9	29.4	26.7	22.1	11.8	(262)	2.96	8
Kleinfeld	5.6	15.0	21.6	24.9	32.9	(213)	3.64	4
Havelock	9.6	19.5	26.6	26.8	17.6	(467)	3.23	6

[a]Number of respondents.

[b]Arithmetic mean, range from 1 (lowest) to 5 (highest).

RANKING OF CANDIDATES BY INDIVIDUAL-SCALE SCORES – ANCHORAGE SUPERIOR COURT

	Legal Reason-Knowledge	Basic Fairness	Freedom From Arrogance	Decisiveness	Willingness to work	Integrity	Professional Competence	Good Character	Understanding Compassion	Judgment	Reasonableness
Branchflower	7	13	11	5	6	12	7	9	13	11	11
Donohue	8	8	7	10	10	9	9	10	8	8	8
Gallagher	9	9	9	11	8+	8	11	8	9	9	9
C. Jones	13	12	13	12	11	13	13	12	10	13	13
Mackey	11	11	10	9	13	11	10	13	11	10	10
Moore	1	1	1	1	1	1	1	1	1	1	1
Murphy	6	6	2	7	7	4	6	4	7	6	6
Serdahely	2	5	8	3	2	6	2	6	5	4	4
Jacobus	12	10	12	13	8+	10	12	11	12	12	12
Anderson	4	3	5	4	3	2	4	3	4	3	3
Shortell	3	2	3	2	4	3	3	2	2	2	2
Robinson	10	7	6	8	12	7	8	7	3	7	7
Wannamaker	5	4	4	6	5	5	5	5	6	5	5

RANKING OF CANDIDATES BY GOOD-JUDGE SCALE – ANCHORAGE SUPERIOR COURT

	% Poor	% Deficient	% Acceptable	% Good	% Excellent	% (n)[a]	% X[b]	% Rank
Branchflower	13.5	26.3	26.3	22.6	11.4	(297)	2.92	11
Donohue	7.7	20.1	29.7	29.7	12.9	(209)	3.20	8
Gallagher	8.3	20.1	32.3	27.2	12.1	(313)	3.15	9
C. Jones	19.0	31.8	23.7	16.4	9.1	(274)	2.65	13
Mackey	9.8	24.8	30.4	26.2	8.9	(214)	3.00	10
Moore	0	3.1	5.0	24.5	67.4	(359)	4.56	1
Murphy	3.8	17.2	30.3	31.5	17.2	(238)	3.41	6
Serdahely	3.2	13.1	20.6	32.1	31.0	(252)	3.75	4
Jacobus	14.7	28.9	29.3	18.7	8.4	(273)	2.77	12
Anderson	1.0	9.7	23.1	39.7	26.6	(290)	3.81	3
Shortell	3.7	8.7	15.0	34.9	37.7	(401)	3.94	2
Robinson	8.6	19.7	25.7	24.3	21.7	(152)	3.31	7
Wannamaker	1.8	12.2	25.2	36.0	24.8	(278)	3.70	5

RANKING OF CANDIDATES BY INDIVIDUAL-SCALE SCORES – NOME SUPERIOR COURT

	Legal Reason-Knowledge	Basic Fairness	Freedom From Arrogance	Decisiveness	Willingness to Work	Integrity	Professional Competence	Good Character	Understanding-Compassion	Judgment	Reasonableness
P. Jones	2	2	2	2	2	2	2	2	2	2	2
Tunley	1	1	1	1	1	1	1	1	1	1	1

RANKING OF CANDIDATES BY GOOD-JUDGE SCALE – NOME SUPERIOR COURT

	% Poor	% Deficient	% Acceptable	% Good	% Excellent	% (n)[a]	% X[b]	% Rank
P. Jones	10.7	16.4	30.7	31.4	10.7	(280)	3.15	2
Tunley	7.8	22.2	28.1	23.3	18.5	(270)	3.23	1

Judicial Merit System Panned

[continued from page 1]

"Of course you have politics," Baxter said. "What you guys really have is a six-member judicial council controlling the voters."

"And heavy political in-fighting when the candidates go to the governor," he went on, referring to his napkin and gesturing toward the chief, who later told him with a smile, "I wanted to come off the bench and punch you."

The bar poll is little more than a popularity contest that can be rigged, Baxter said. "If you really think lawyers are answering those questions honestly you're wrong."

Rabinowitz, ex-officio chairman of the Judicial Council, tried to demur.

He cited the case of his own former law clerk, **Robert Coats**, recently appointed to the Intermediate Court of Appeals although he had never met the governor and did not campaign.

But the Alaska chief justice was interrupted by murmurings from the floor. "He had friends who knew the governor," a man said.

Baxter was up on is feet again. "How democratic can it be if judges are chosen by a governor who gets information from the Judicial Council and the attorney general and his friends?" he asked.

"Well, it's a good start," said the chief justice dryly.

Judge **Betsey FitzGerald Rahn** of Walnut Creek, Calif., stood up. There is another problem, she told the chief.

"I am a tough judge and the bar doesn't like me and I wouldn't do well on a bar poll."

"But by golly, my court is run better than any other. And I win the elections." And she sat down to the applause of her colleagues.

Said another judge as he leaned against the wall listening to the free-for-all: "Well, I'd rather be judged by the lawyers than the newspapers."

Across the room, another Florida judge got to his feet. What about the press, he asked. How do they feel about your Judicial Council?

Answered Rabinowitz: "The media takes very little interest in the meetings of the Judicial Council."

"Are your meetings really open to the press?" Baxter asked Rabinowitz later, pinning him down after he came off the podium.

"Of course," the chief answered.

What about your executive sessions when you vote on candidates?

"Well, executive sessions aren't open, of course," Rabinowitz said emphatically. "And we don't allow the press to sit in on the voting. But all the other meetings are open."

Florida Judge **Dick C.P. Lanz** stood listening. Now he jumped into the fray. "What good does that do?"

"You guys are playing games. The people have a right to know how you vote." Closed meetings are full of politics, he said.

Judge **Leo Wiener** of San Diego leaned forward on his cane to get the chief justice's attention.

The best source of information about a city is a cab driver, he told the chief. And on the way in from the airport, Wiener had asked a driver about Alaska's judicial system.

Said the driver to the California judge: "That stinking council is unfair. It allows lawyers to vote on judges and that is wrong."

"So there you are," said Wiener.

"That's what ordinary people think."

The convention continued Thursday with an address at 7:30 p.m. by Judge Robert Boochever, former Alaska Supreme Court justice and now a judge on the Ninth Circuit Court of Appeals.

(Text of article originally published in Anchorage Times. Reprinted by permission of author.)

First Alaskan Elected to Board

For what appears to be the first time in the one hundred three (103) years of history of the American Bar Association, an Alaskan, **Richard O. Gantz**, of Anchorage, Alaska, has been elected to the Board of Governors of the American Bar Association.

While control and administration of the American Bar Association is vested in the House of Delegates, the board is authorized, between the twice yearly meetings of the House to perform the functions that the House itself might perform.

Mr. Gantz was elected for a three-year term commencing August 31, 1980, as a representative of District 13. The states encompassed in that district include Alaska, Idaho, Montana, Oregon, and Washington.

Gantz, who is a senior partner in the law firm of Hughes, Thorsness, Gantz, Powell and Brundin, has served Alaska for three (3) years as the state delegate to the American Bar Association's House of Delegates.

The State Delegate is one elected in Alaska by the members of the American Bar Association resident in the state.

Keith Brown of the law firm of Hagens, Smith, Brown & Gibbs was unanimously elected by the American Bar members in Alaska for a three-year term to fill the state position left vacant by Gantz seating on the Board of Governors.

Keith Brown was president of the Alaska Bar in 1975-1976. He has served two 2-year terms in the House of Delegates as the Alaska Bar Association's delegate.

At the 1980 Annual Meeting in Honolulu, **Donna Willard** of the law firm of Richmond, Willoughby & Willard was seated as the State Bar Delegate as a result of her election earlier this year. Willard is the immediate past president of the Alaska Bar.

With the three Alaskans, Alaska probably now has the largest *per capita* representation of any state in the House of Delegates.

Seamen's Suits

Mr. William B. Rozell, President
Alaska Bar Association
311 Franklin Street, Suite 201
Juneau, Alaska 99801

Dear Bart:

Reference is made to our former correspondence regarding closer liason between the Alaska Bar Association and the federal courts. A matter of concern to us has arisen and I hope the Board of Governors can assist in reaching a solution.

We have become aware over the past several years of an increase in cases filed in the federal courts in Alaska in Seamen's suits, under 28 USC 1916. In almost all cases the individuals appear *pro per.*

In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepayment of fees or costs or furnishing security therefor. Seamen seem to be aware of this basic premise, but unaware of how to pursue it other than to appear at the Clerk's office expecting a solution to their problems. Few have sought advice of counsel and, in fact, have no funds with which to retain counsel. There is no provision under which the court can appoint and pay counsel to represent such individuals.

During the calendar year ended July 31, there were twelve (12) such cases filed in this court.

My request is that the Board consider recommendation of some method whereby a list of attorneys for *pro bono* referrals could be made by the Clerk's office, at Anchorage, Ketchikan, and Juneau. Perhaps a name from Cordova and Kodiak also would be helpful.

These cases have become a concern to us since the individual seaman rarely has any idea of how to proceed and expects the personnel of the office of the Clerk to advise and assist in the prosecution of their cases. I think you will agree that this method of handling the cases is inappropriate.

I do appreciate your attention to this request.

Best regards.

Very truly yours,
James A. von der Heydt, Chief Judge

Notice

The Board of Governors has requested that Judge **von der Heydt**'s letter be printed in the *Bar Rag* so that the membership is aware of the judge's concern for the legal welfare of seamen seeking restitution through the federal courts. Association members interested or willing to accept referrals in this area (preferably *pro bono*) are urged to contact the Bar Office (272-7460). A list of those attorneys willing to assist the federal court with this problem will be compiled and submitted to Ms. **JoAnn Myres**, Clerk of the U.S. District Court. Your cooperation is appreciated.

Unique U.S. Court of Appeals Panel

On September 9, 1980 at 9:30 a.m. a unique U.S. Court of Appeals panel was convened for oral argument in Courtroom #2 of the U.S. Court of Appeals and Post Office Building in San Francisco, California. Judge **Herbert Y. Choy** presided and opened the session with the following statement:

"I believe that this event should not pass without comment because of its more than casual historic interest. For the first time in the ninth circuit and for the first time in the history of the federal judiciary we are sitting as a U.S. Court of Appeals panel composed of judges who are all of Asian descent. Judge **Shiro Kashiwa**, of Japanese extraction, is a visiting judge with us today from the U.S. Court of Claims. Judge **Thomas Tang** of our court is of Chinese descent and I am of Korean descent. We mention this to note that this type of event could only occur in a great country such as ours. We do not think this would occur even in the Orient.

"In the near future other unique Court of Appeals panels will inevitably occur in this circuit; for example, a panel in which all the judges are Black or perhaps a panel consisting of all female judges."

Legal Assistance for Military Personnel

The LAMP Committee has been working for a decade to provide a permanent statutory foundation for military legal assistance. Bills to accomplish this goal, S. 1130 and H. R. 4001, have been introduced in Congress—for the third consecutive Congress. After years of effort, and with the assistance of the ABA Governmental Relations Office, the Committee's legislation recently received official Administration support for the first time ever.

The legislation, which received approval in principle by the American Bar Association in 1972 and specific ABA endorsement in 1975, provides for professional assistance concerning the legal problems of members of the armed services and will have a significant positive impact on military discipline and morale. Without such a law, the military legal assistance programs are in danger of sharp curtailment or elimination.

It is hoped that significant curtailment or elimination of military legal assistance programs will be prevented by providing them with the necessary statutory recognition and authorization. Although H.R. 4001 and S. 1130 could provide a basis for future requests for resources, enactment of this legislation does not mandate any new expenditures. This legislation would provide each branch of the Armed Forces with the authority to develop and improve legal assistance in its own respective way.

These bills are strongly supported by the American and Federal Bar Associations, as well as the Department of Defense and the Administration. In recent months, Committee members have used various means to urge members of the Senate and House Armed Services Committees to support passage of the legislation.

In the Court of Appeals of the State of Alaska

Notice of Possible Conflict of Interest

TO: ALL ATTORNEYS AND PARTIES WITH CASES PENDING IN THE COURT OF APPEALS

Each of the three judges of the newly established Court of Appeals has previously served for substantial periods of time in positions with agencies in Alaska handling large volumes of criminal litigation. This circumstance greatly increases the number of situations in which there is a potential for conflict of interest requiring recusal.

Each of the court's judges has carefully reviewed the current list of cases pending in the Court of Appeals, and other appropriate steps have been taken to identify cases in which conflict of interest exists. In a number of cases, one or more of the court's judges have deemed it necessary to disqualify themselves. In instances of such disqualification, counsel of record have been or will be notified directly by the clerk of the appellate courts.

It would be extremely difficult, however, for the judges of the court to isolate all instances of potential conflict of interest without assistance from appellate litigants. Accordingly, all parties and attorneys of record in cases pending before the Court of Appeals are alerted to the possibility that occasional instances of conflict of interest may arise without being detected by the court.

The following background information pertaining to each of the court's judges is provided to assist litigants and counsel of record in spotting and calling to the court's attention any potential conflict situation which might have been overlooked by the court:

Chief Judge **Alexander O. Bryner** served as United States Attorney in Anchorage from November, 1977, to the time of his appointment. From April, 1975 through October, 1977, he was a judge of the Alaska District Court, Third Judicial District, Anchorage; from July, 1972, through May, 1974, he was an assistant public defender in Anchorage.

Judge **James K. Singleton** served as a Superior Court Judge, Third Judicial District, Anchorage, from January, 1970, to the time of his appointment to the Court of Appeals. While stationed primarily in Anchorage, Judge Singleton's duties have required his periodic participation in cases arising throughout the state.

Judge **Robert G. Coats** served as an assistant attorney general in Fairbanks from August, 1978, to the time of his appointment to the Court of Appeals. Between August, 1973, and August, 1978, he was an assistant public defender in Fairbanks, and immediately prior to August, 1973, he served for a period of one year as an assistant public defender in Kenai. Additionally, Judge Coats' wife, **Natalie Finn**, has served since 1973 as an assistant district attorney in Fairbanks.

All parties and attorneys of record in cases pending before the Court of Appeals are requested to review carefully the foregoing information and to call to the immediate attention of the court any instances of potential conflict of interest which might be found. Appellants' counsel are specifically urged to discuss personally with their clients the information contained in this notice and to inquire as to the possibility of a conflict of interest.

The Court of Appeals expects that, with the passage of a relatively short amount of time, the incidence of conflict of interest will be greatly reduced. For the time being, however, the cooperation of all litigants in dealing with the situation will be greatly appreciated.

CIVIL PRACTICE AS IT IS

by J. B. Dell

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA ____ JUDICIAL DISTRICT

Plaintiff,

v.

Defendant.

No. _____

MEMORANDUM TO SET CIVIL CASE FOR TRIAL

Was Jury Demanded? _____ (Yes or No)
Will Jury Demand be waived at last minute _____ (Yes or No)
Is Defendant covered by insurance? _____ (Yes or No)
Estimated Time For Trial _____ Days
Preference claimed _____ (Yes or No)
Reasons for Preference:
_____ Client not paying fee
_____ Client dying
_____ Atty planning sabbatical soon
_____ Other

NATURE OF ACTION
1( ) Personal Injury-Prop. Dam.
2( ) Domestic Relations
3( ) Hurt Feelings
4( ) Dog
5( ) Zobel-Type Case
6( ) Slip 'n Fall
7( ) Other

NAME AND ADDRESS OF ATTORNEYS ARE:

FOR PLAINTIFF

FOR DEFENDANT

(USE REVERSE SIDE FOR ANY ADDITIONAL NAMES & ADDRESSES)

I hereby represent to the Court that all essential parties have been served with process and have answered, that virtually no discovery has been done in this case but that it will probably be ready for trial a year from now. I also certify that I know of no additional pleading to be filed other than the usual flurry of last minute motions.

By: _____
Attorney for

Any party not in agreement with the information or estimates herein shall reply within 10 days with your own version and *specify* why yours is better.

*Note—There will be a $100.00 per day penalty for incorrect estimate of time for trial (liquidated damages).

Frankel Joins Women's Organization

Anchorage lawyer **Marvin Frankel** has become the first Alaska male to join the Business and Professional Women's Organization.

The group changed its bylaws last July to allow men to become members.

(Reprinted from the Friday, September 19, Anchorage Daily News.)

TVA Minutes

Minutes of the September 12, 1980 Meeting of the Tanana Valley Bar Association

The meeting was again held in Tiki Cove. There were no guests. A discussion was had with **Randy Clapp** in hopes of reforming the Judicial Council and/or their questionnaire re selection of judges, and the meeting went into executive session. Whether anything was accomplished is a matter of conjecture.

By executive fiat,

_____
King Arthur

Minutes of the September 26, 1980 Meeting of the Tanana Valley Bar Association

The meeting was called to order at 12:20 by President **Jon Link**. Guests were **Sharon Emily** and **Don Logan**. The secretary had left the minutes in the xerox machine. The treasurer had forgotten to bring himself to the meeting, and the American Cancer Society offered to give us a course in breast self-examination and/or how to stop smoking. Judge **Connelly** suggested that we subscribe to the stop smoking course if the American Cancer Society could make it work with Judge **Van Hoomissen.** Judge Van Hoomissen indicated that he could quit anytime; he just didn't want to. Judge Connelly reported for the Judge **Clayton** retirement committee, indicating that a three-day bash would start on October 14th at Club 11 with 7:00 a no-host cocktail affair and 8:00 a dinner which will cost $15 or $16, depending upon what you eat. **Art Robson** (of left the minutes in the xerox thing) reported on the up-coming CLE program on malpractice insurance which will either be on Friday the 10th or Friday the 12th of October, depending on which of **Randy Bruns'** letters you read. **Dave Call** suggested that the tax for nontax attorneys seminar be videotaped in Anchorage so that we could view it here in Fairbanks. Jon Link announced that the University of Washington was upset that **Carolyn Jones** had found about the Manders fund which pays about $70,000 a year, and they would like to use it for a chair in Alaskan law or to somehow support the teaching of Alaskan law at the University of Washington law school. Judge Van Hoomissen recommended that we hire **Stew Olds** to sue to get the fund for Alaska. **Dick Madson** moved, and **Andy Kleinfeld** seconded, that we show that we are bigger than **Charlie Parr** by inviting him to come to our lunch and speak to us. Andy Kleinfeld moved to amend by adding that we advise Mr. Parr that we will listen to him even though he won't listen to us. There was no second to the potential amendment, but it passed nonetheless,

[continued on page 12]

Simplified Employee Pension Plans

by William Barnes

In 1974 Congress passed the Employment Retirement Security Act which is known by the acronym "ERISA." This legislation was passed to correct real and perceived abuses in retirement plans of business corporations and labor unions. It does not regulate the retirement plans of states and municipalities, nor does it have anything to say about the largest retirement plan of all, which is called Social Security.

ERISA is one of the most comprehensive and complex pieces of legislation ever enacted by Congress. In a recent address, as reported by the Harvard Law School Alumni Bulletin, **Henry Friendly,** Harvard Law School, Class of 1927, had this to say. "Pension plans in most industries were a matter of employer grace, or collective bargaining; we now have that monster called "ERISA." We have had to recruit a considerable body of lawyers who understand it, and—I am told—very little else."

Possibly this legislation corrected some problems. It certainly created additional problems which did not exist in the past.

In 1975, following the enactment of ERISA, two things happened which were related:

1. The IRS published 250 pages of regulations covering retirement plans.
2. Over 13,000 small pension plans were discontinued by employers. The termination of plans continues by the hundreds. Thousands of new plans remain unborn because of the problems and liabilities of ERISA. Because of being subject to ERISA, qualified plans are too expensive for a small business organization.

In Alaska, the largest bank charges a flat fee of $500 to maintain a pension or profit sharing plan. Additionally, there is a percentage charge based on assets. This fee doesn't include the necessary reporting. The local office of a major "Big Eight" accounting firm charges $500 to do the reporting for a plan to the IRS and the Department of Labor.

Therefore, the cost of a qualified plan will be in the range of $800—$1,600 for each plan. If there are two plans, a pension and a profit share, this figure is double. In a small plan where the contribution level may be $5,000 to $10,000 per year, these fixed fees will come to 10% to 20% of plan contributions, which eliminates any reason for having the plan.

In 1978, Congress did something about this situation in the Revenue Act of 1978 which directed the IRS to produce a simplified retirement plan which would be free of ERISA and DOL reports, and which would encourage employers to set up retirement plans.

The IRS created the Simplified Employee Pension Plan, or SEPP. The basis of the SEPP is the Individual Retirement Account or IRA, which was conceived in the original legislation of 1974. When the IRA is used as part of a SEPP, the employer may contribute 15% of the employee's pay up to $7,500, which is the same limit for Keogh plans. Because of the higher contribution level, these plans are sometimes called "Super IRAs."

Here are the principal features of the SEPP:

1. The basic IRA rules on taxation of distributions, penalties for early or late withdrawals, loans, and prohibited transactions all apply to SEPPs.
2. An employee who:
   a. Has performed any service (even part time) for any part of three out of the five preceding years (calendar years) and
   b. Has attained to age of 25, must be included.
3. A SEPP must be in writing but it is not a qualified plan. It does not come under Section 401 or 501 of the Code.
4. The same percentage of pay must be contributed for all participants. However, no compensation over $100,000 may be taken into account.
5. Employer contributions may be varied from year to year. There is no statutory requirement imposing a condition of permanency on a SEPP.
6. If an employer contributes more than 15%, the excess would be considered a carry-over to the next year.
7. Using IRAs, each employee has his own account. It isn't necessary in a SEPP that the participants all have the same type of IRA account. In a law firm with six participants, three might have their money in a mutual fund IRA account, two in the annuity of a life insurance company, and one in the IRA account of a savings bank.
8. Because the participants have their own accounts, and are fully vested and in complete control of the investments, the employer has no fiduciary responsibility.
9. SEPPs can be used by any type of business or professional organization. They can be used by corporations, sole proprietors, partnerships, co-ops, nonprofit 403(b) organizations, and governmental organizations.
10. SEPPs can be integrated with Social Security.
11. It is possible to have a SEPP and a qualified plan as well, using Section 415 of the Code. The SEPP is treated as a defined contribution plan for the purposes of calculating the 25% contribution level.

What sort of retirement benefit will these plans provide? Here are the figures, using a 9% assumed rate of interest, and the current annuity rates of a major life insurance company. (1980 rates)

Age at Start of SEPP	Years To 65	Total Cont.	50% Tax Bracket After Tax Cost	Lump Sum Age 65	Monthly Income
30	35	$262,500	$126,000	$1,617,000	$12,800
35	30	225,000	108,000	1,022,000	8,063
40	25	287,500	900,000	635,000	5,010

How do you go about setting up a SEPP? All that the employer needs to do is prepare a written allocation formula and follow some simple administrative and disclosure duties. The allocation formula covers:

a. Eligibility requirements
b. Procedures for contributions by the employer

A copy of the allocation formula must be given to each participant. A model allocation formula has been prepared by the IRS known as Form 5305-SEP. Allocation formula prototypes are also supplied by banks, mutual funds, and insurance companies.

Then, IRA accounts are set up by the employees and the contributions made to open the accounts. Using the model form 5305-SEP as a guide, adequate disclosure by the employer would be accomplished by providing each participant with a copy of the allocation formula, a copy of some general information about SEPPs, and written and timely notification of the exact dollar amount of the employer's annual contribution to the plan. The contributions to the plan must be made no later than April 15th following the calendar year for which the contributions are made. The employer must report the total contribution on each person's W-2 form. No income tax is withheld from the contribution and, under the Technical Corrections Bill (HR 2797), the same will apply to FICA and FUTA taxes. For 1980, the W-2 form will provide a special box in which the employer may indicate the contributed amount.

At the present time, only stockbrokers and mutual fund distributors seem to be making any attempt to distribute SEPPs. One major life insurance company—Bankers Life of Des Moines—has advertised that they are offering these plans, and other life insurance companies will be sure to follow. Predictably, there have been articles attacking the concepts of the SEPP written by actuaries and pension consultants who sell and establish ERISA-type plans.

What does the future hold for SEPPs? Contribution amounts are sure to go up in amount. Congress is going to index plan contributions to inflation to help people provide for their own retirement. Large companies will give serious consideration to getting out of defined benefit pension plans in favor of SEPPs. Most of the Fortune 500 companies are more than 50 years old, and they have defined benefit pension plans. Defined benefit pension plans must bear the heavy cost of ERISA as well as premium payments for government insurance. If there isn't enough money in the plan to pay the projected benefits, the employer may be required to pay up to 30% of its equity to terminate a plan.

The most serious problem with a defined benefit pension plan is inflation. There is no way of predicting the contributions as required. Take the case of a man earning $25,000 per year at age 30. Suppose his pension plan promises him 60% of his final year's earnings as a pension. With a 9% annual increase in his compensation, he will be earning $510,000 at age 65 and will be eligible for a pension of $306,000 per year or $25,500 per month. What company can come up with funding for guarantees like this?

House of Delegates Takes Stand on Controversial Resolutions

During its 1980 Annual Meeting in Honolulu, Hawaii, the House of Delegates of the American Bar Association considered, debated and acted upon several controversial issues.

In action generated by the apparent noncooperation of legal services corporations in the eastern part of the country with respect to funding of bar sponsored programs for the poor, the House passed a resolution recommending to Congress an amendment of the legal services corporation act to mandate the opportunity for substantial involvement of private lawyers in providing legal services to the poor.

A proposal which would have allowed any lawyer from any jurisdiction to appear in any state court so long as that person was in good standing in another jurisdiction was soundly defeated. The *pro hac vice* resolution, provided that local counsel be associated only in the discretion of the court. Further, a person could not have been barred from practice in any jurisdiction without notice, a hearing, and a showing that the lawyer had committed acts which would amount to misconduct in the jurisdiction in which he sought to appear.

Professional Discipline

The ABA standing committee on professional discipline has now been charged with the responsibility for developing a model enforcement mechanism for the discipline of lawyers who practice before federal and state administrative agencies. This action came in response to a perceived danger in the exercise of disciplinary jurisdiction by administrative agencies, and the apparent, chilling effect on diligent and independent representation.

In response to foot dragging by the federal judiciary with respect to the formulation of mechanisms for removal of unfit judges and for judicial discipline, which has been urged by the ABA since 1937, the House of Delegates rejected a resolution providing more time for the judicial councils to formulate such procedures.

In related action, a resolution was passed supporting pending federal legislation which would provide such mechanisms. The bills included are Senate Bill 295, HR623, HR1227, HR4115, HR4641, S1873 and HR5873.

Political Affiliation

Because the overwhelming number of federal judges appointed by Jimmy Carter are from his own party, despite prior election promises to the contrary, the House overwhelmingly adopted a resolution requesting the addition to the appropriate executive orders of language which would prohibit the consideration of political affiliation in evaluating the qualifications of proposed nominees for federal bench positions.

In reaction to the Republican plank calling for appointment of judicial candidates favoring specific ideological beliefs, the House overwhelmingly passed a resolution condemning the addition of such a criterion to the selection of federal judges.

A new ethical consideration to the Code of Professional Responsibility, labeled EC9-7, was promulgated. It provides, "a lawyer has an obligation to the public to participate in collective efforts of the bar to reimburse persons who have lost money or property as a result of the misappropriation or defalcation of another lawyer, and contribution to a clients' security fund is an acceptable method of meeting this obligation."

In two resolutions, the House supported increases in federal judicial compensation. Included within those proposals was a special committee on federal judicial compensation.

Law Schools

Also approved was a new standard with respect to law schools which calls for legal institutions to demonstrate or have carried out and maintained by concrete action a commitment to provide full opportunities for the study of law and entry into the profession by qualified members of groups which have been victims of discrimination in various forms.

It was stressed that this new standard was not to be read as lowering admission qualifications.

The conditions under which ABA membership can be terminated have been clarified. Other than a voluntary resignation, membership cannot be terminated until there has been a final order or judgment convicting a member of a felony or disbarring or suspending a member for more than six months.

Prior to the change, membership could be terminated as a result of an interlocutory order and for any suspension whatsoever, including a one day suspension.

In other action, the House gave approval to the UN Convention on Recovery Abroad of Maintenance, supported the Extension of the Child Abuse Prevention and Treatment Act and funding for child welfare serivces, and recommended that Congress enact legislation establishing uniform principles for regulation of attorney fees in proceedings conducted before federal administrative agencies including a provision which would prohibit arbitrary maximum fees and provide for reasonable attorneys fees. It also urged that lawyer referral programs be revised to increase outreach to older persons and to create special panels and fee adjustments to better serve the elderly of moderate means.

Sex Discrimination

Disapproved were resolutions calling for the elimination of discrimination on the basis of sexual orientation in matters dealing with immigration and naturalization, the creation of a new class of law administrative associates for persons not lawyers but otherwise engaged in helping lawyers deliver legal services, and one calling for the right of privacy in matters of sexual orientation.

Deferred until the mid-winter meeting in 1981, which will be held in February, in Houston, Texas, was the adoption of standards relating to the legal status of prisoners. More input is sought from all sectors of the American Bar with respect to these standards.

The model state statute with respect to reducing victims/witness intimidation was overwhelmingly approved as was a resolution urging amendment of the federal immunity of witnesses act requiring judges, not U.S. Attorneys, to determine whether a defense witness can be compelled to testify over a claim of privilege against self incrimination.

The American Bar, as a result of House action, will be urging that the Civil Rights Act be amended to provide that no sex discrimination can occur in places providing public accommodations. Also, all states are urged to assist persons of diminished mental capacity to live with maximum self sufficiency by enacting laws allowing court appointment of limited or partial guardians where persons of diminished capacity need some but not total assistance in making decisions concerning their personal affairs or estates. It is expected that uniform state laws with respect to this matter will be promulgated in the near future.

The foregoing action, of the House of Delegates now becomes official American Bar Association policy.

ERA Impact Project Information Request Notice

The NOW Legal Defense and Education Fund and the Women's Law Project of Pennsylvania are working on a special education and litigation project aimed at developing principles of sex equality within the structure of state law. The primary focus of this joint project is in those states that have added equal rights provisions to their state constitutions.

Information is being gathered about reported and unreported cases and administrative decisions in Alaska, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Montana, New Hampshire, New Mexico, Pennsylvania, Texas, Utah, Virginia, Washington and Wyoming. In mid 1980, the Project will begin publishing educational material and will announce the opening of its clearinghouse on state ERA information.

Since much of the material on state cases is unreported and difficult to locate, the Project has issued a general call for assistance. Any information about cases addressing issues under a state equal rights provision in the target states should be submitted to the ERA Impact Project, NOW Legal Defense and Education Fund, 36 West 44th Street, New York, New York 10036.

More TVA Minutes

[continued from page 9]

as did the main motion. **Bob Groseclose** moved and **Art Robson** seconded that we buy Charlie Parr's lunch when he attends the meeting. After a few small fist fights, this passed, and Judge Van Hoomissen moved that we buy Charlie Parr. There being no second, **Dick Burke** moved, and Judge Clayton seconded, that we make the invitation for October 17th, which is a court holiday. That motion failed. **Harry Davis** moved that we invite **Frank Murkowski**, but no one seconded that. **Steve Cowper** moved that we invite **Wolfgang Falk**, and Judge Van Hoomissen turned pale. Judge Blair moved, and Judge Connelly seconded, that we invite no politicians to attend our meeting unless said politician happened to be admitted to the Bar. Judge Van Hoomissen moved to amend the motion by providing that we submit the attendance of any politician to a vote of everyone in the whole world. There being no second, Andy Kleinfeld moved to table the main motion until the first Wednesday after the first Tuesday after the first Monday in November. Bob Groseclose seconded this. **Barry Jackson** raised a point of order that was really a motion to postpone and not a motion to table. Nobody seemed to realize that we didn't have a meeting on Wednesdays anyway, but calamity was averted by the failure of the motion. **Terry Thorgaard** moved that we amend the main motion to invite not only lawyer politicians but also anti-lawyer politicians. This motion not having received a second, the main motion then failed which left some members in a pique of anger, some in a pique of frustration, and three members asleep. **Harry Davis** again moved that we invite Frank Murkowski. Andy Kleinfeld seconded the motion, but that motion failed. Judge Blair moved that we invite **Glenn Hackney** with Charlie Parr. Some members laughed and others seconded the motion. Someone threw in that we not tell either potential senator that the other one was going to be at the meeting. Judge Clayton indicated that if we could get both of them there without either one knowing that the other one was coming, he would buy both of their lunches. President Link indicated that this motion, if passed, carried with it a motion to buy Glenn Hackney's lunch, and the motion passed. The meeting was adjourned, and then Andy Klenfeld moved to reconsider the Murkowski resolution. There was no second, but Judge Connelly moved that we invite both Frank Murkowski and **Clark Gruening** so as to be even and fair with everyone. Harry Davis seconded this, and by the process of moral decay it was determined that October 10th would be the day for the invitation. The waitress was having a hard time collecting the bills, because of a small outbreak of fist fights when Judge Blair moved for adjournment. It was seconded by Dave Call and passed by a plurality that nearly tripled the number of people present in the room.

By executive fiat,

King Arthur

Minutes of the September 19, 1980 Meeting of the Tanana Valley Bar Association

President **Link** called the meeting to order at about 12:20. Guests were **Susan Belke, Nanette Thompson** and Doug Blankenship. President Jon announced that **Steve Cowper** was running for the Legal Services Board to take **Jim Cannon's** seat. Cowper acknowledged this, but refused to acknowledge an appeal with respect to the Interior Alaska Newsletter, thereby rendering the solicitation a moot point.

Moved by **Barry Jackson**, seconded by **Larry Wood**, that Judge **Mary Alice Miller** be nominated to the BPW as woman of the year. The motion passed, and Judge **Hugh Connelly** was directed to fill out the forms or whatever it is we do. On the judicial retention question, Judge **Cline** outlined his thoughts and feelings. **Tom Fenton** moved, and probably **Andy Kleinfeld** seconded, a motion that a circulated text explaining the Judicial Council poll be inserted in four-column format both fairly soon and on the Saturday before the election. Presumptive publication to be in the *News-Miner*. Total cost to be somewhere near $460.00. Larry Wood moved to change the wording to insert a period after the word "lawyers" in the last sentence and strike out the next couple of words, commencing a new final sentence with the word "The." Since the maker and second accepted that amendment, Judge Connelly moved that following the word "The" immediately referred to above, the words "Alaska Judicial" be inserted and a capital "C" be put on the word "Council." The maker and second accepted this amendment, and **Terry Thorgaard** moved, with **Chris Zimmerman** seconding, that the ad be further amended to insert an additional final sentence indicating that the Tanana Valley Bar Association takes no position. That motion failed. The main motion carried, and soon the whole world will see the end projects of two weeks of extended Bar Association debate.

Jim DeWitt moved, with **Barry Jackson** seconding, that the bankruptcy court consider the application of **Jeanette James** to become a trustee in the Fairbanks area promptly. There was a lot more to the motion, but it was all poetry. The motion passed. The library report engendered some passionate debate with an announcement that the library was going to be rearranged when we got shelves and it would be closed for a while, since the Van Hoomissen and Blair children weren't doing it this time. Andy Kleinfeld moved, Judge Van Hoomissen seconded, that we notify the requisite court system library wheels that we disapprove of closure, and an amendment by Art Robson was accepted by the movant and second that we volunteer to assist with about 10 members of the bar and do it some weekend afternoon, thereby producing the possibility that we might be able to find something in the library. That motion passed.